STATE OF MICHIGAN

COURT OF APPEALS

HOFFMAN & WARTELL, PC,

Plaintiff-Appellant,

v

MARCIE ANN MILLARD,

Defendant-Appellee,

and

WILLIAM MITCHELL, III and KATHLEEN SOLOMON,

Appellees.

UNPUBLISHED
July 10, 2003

No. 237045
Oakland Circuit Court
LC No. 96-528231-CZ

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order awarding $20,000 to plaintiff, but denying plaintiff's motion for attorney fees, costs and interest. We affirm in part, and remand to the lower court for a determination and award of interest.

The facts in this case are straightforward, and largely not in dispute. Plaintiff alleged that Millard embezzled funds while in plaintiff's employ.[1] Plaintiff filed suit, and, at the inception of that suit, received an injunction barring the release of any funds from Miller's accounts until the claims against her could be resolved. Despite this injunction, Millard, through the action of her attorneys, Mitchell and Solomon, obtained an order from the lower court allowing Millard to withdraw $20,000 from an account to pay her attorney fees. After several appeals, this Court reversed the trial court's release of the funds. See *Hoffman & Wartell PC v Millard*, unpublished order of the Court of Appeals, entered January 11, 1999 (Docket No 214845). Plaintiff thereafter sought an order of restitution as against Solomon and Mitchell for the $20,000 that had been

[1] The claims by plaintiff against Millard, and the counterclaims by Millard are not at issue here. Millard was found both civilly and criminally liable for the embezzlement. This appeal solely takes issue with the release of funds from Millard's account, and the trial court's refusal to award plaintiff attorney fees, costs and interest as a result.

released. The trial court ruled, however, that plaintiff could receive restitution from only defendant Millard. Plaintiff once again appealed. This Court again reversed the decision of the trial court. *Hoffman & Wartell PC v Millard*, unpublished order of the Court of Appeals, entered May 26, 2000 (Docket No 217751). Pursuant to this Court's last order, the trial court ordered appellees to return the $20,000, but denied plaintiff's motion to assess attorney fees, costs, and interest.

Plaintiff now asserts that the trial court violated the law of the case doctrine when it ordered the return of the $20,000, but declined to award attorney fees and expenses. The law of the case doctrine directs that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with regard to that issue. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). "Whether law of the case applies is a question of law subject to review de novo." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

Plaintiff maintains that this Court's May 26, 2000 order established a mandate by which the trial court was required to award plaintiff its fees and expenses. The order reads:

> Pursuant to MCR 7.205(D)(2) and MCR 7.216(A)(7), the February 3, 1999 order of the Oakland Circuit Court is REVERSED to the extent that it finds that plaintiff is not entitled to restitution from appellees William Mitchell or Kathleen Solomon. Plaintiff has been found to be entitled to restitution and damages from defendant. The Oakland Circuit Court's prior orders allowing defendant to withdraw funds frozen by a previous order of that court have been reversed. In order to give complete effect to this Court's previous orders, it is necessary to return the parties to the *status quo* before the Oakland Circuit Court's April 29, 1998 order permitting withdrawal of $20,000 from the frozen account. *Roek v Chippewa Bd of Ed*, 430 Mich 314, 320; 432 NW2d 680 (1988). Appellees Mitchell and Solomon may not retain any money withdrawn from the frozen account pursuant to the reversed circuit court orders. *Herpolsheimer v Herpolsheimer Realty Co*, 344 Mich 657, 666-667; 75 NW2d 333 (1956).

According to plaintiff, the Court's instructions that plaintiff is entitled to "restitution and damages" and that the trial court must "return all parties to *status quo*," mandate the award of attorney fees and expenses. We disagree.

Contrary to plaintiff's contention, we find that the May 26, 2000 order of this Court does not contain a mandate to assess attorney fees. The order clearly states that plaintiff is entitled to restitution from Mitchell and Solomon. This is in contrast to the restitution and damages that plaintiff had previously been found to be entitled to from defendant. Accordingly, the order awards plaintiff the restitution amount as against Mitchell and Solomon, which would encompass only the $20,000 and possibly interest, but not attorney fees.

Furthermore, Michigan case law prevents this Court from accepting plaintiff's assertion that it is entitled to attorney fees. Michigan follows the "American rule" regarding attorney fees. *Shoenssee v Bennett*, 228 Mich App 305, 312; 577 NW2d 915 (1998). Under the American rule, a party may not recover attorney fees as costs or damages unless expressly authorized by statute, court rule, or a recognized common-law exception. *McCausey v Ireland*, 253 Mich App 703,

705; 660 NW2d 337 (2002). Plaintiff cites no statute or court rule authorizing attorney fees in this case.

Plaintiff contends that aside from the Court's mandate, the trial court abused its discretion in failing to assess sanctions, in the amount of attorney fees, against Mitchell and Solomon, for their behavior. There is no question that "a trial court has inherent authority to impose sanctions on the basis of misconduct of a party or an attorney." *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639; 607 NW2d 100 (1999). However, plaintiff fails to appropriately set forth a basis for an imposition of sanctions.

Plaintiff refers to MCR 2.114 and MCR 7.216(C) as grounds for the imposition of sanctions; however, these rules are inapplicable. MCR 2.114 applies to the propriety of pleadings as well as the facts that comprise the pleadings. However, plaintiff primarily takes issue with the conduct of Mitchell and Solomon in obtaining the funds. Therefore, we find MCR 2.114 is not the appropriate standard by which to request fees in this case. Moreover, MCR 7.216(C) applies to vexatious appeals, which are not present in this case. Under the circumstances, because plaintiff failed to identify a proper basis for an award of sanctions, plaintiff's argument that the trial court abused its discretion in failing to award sanctions is without merit.[2]

Plaintiff also claims that it is entitled to interest on the $20,000. We agree. In its May 26, 2000 order, this Court required that plaintiff be returned to *status quo*. We find this necessitates payment of interest due from the time the funds were improperly withdrawn.

Finally, plaintiff urges this Court to direct remand to another judge because the judge referred to his personal experiences with embezzlement. Rather than show any specific act of prejudice, plaintiff argues that the fact that the trial judge had those experiences, and that he referred to those experiences, evidences a prejudice on the part of the trial judge. However, the record shows that just the opposite is true. The trial judge referred to his previous victimization to express that he could empathize with plaintiff. However, the trial judge's ruling was in spite of that empathy. Because plaintiff fails to show how the trial judge was prejudiced, or how plaintiff suffered as a result of that prejudice, and because remand is necessary only to calculate interest, we decline plaintiff's invitation to direct remand to a different judge.

Affirmed in part, and remanded to the trial court for a determination and award of interest. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Brian K. Zahra

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[2] Plaintiff alternatively argues that even if no statute or court rule provides for sanctions, this Court should impose sanctions under its inherent powers. We find no basis to do so.